

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

**EDUARDO M. GARCIA,**

Petitioner,

v.

**DIRECTOR, TDCJ-CID,**

Respondent.

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Civil Action No. **3:21-CV-294-L-BN**

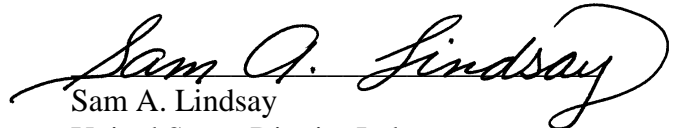
**ORDER**

The Findings, Conclusions and Recommendation of the United States Magistrate Judge (“Report”) (Doc. 5) was entered on February 11, 2021. The Report recommends that the court deny Petitioner’s Motion to Proceed In Forma Pauperis (“Motion”) (Doc. 4) and dismiss without prejudice this habeas action under Federal Rule of Civil Procedure 41(b) for failure to prosecute and comply with a court order *if* Petitioner fails to pay the \$5 filing fee within 21 days of any order accepting the magistrate judge’s recommendation or within some other reasonable time set by the court.

Petitioner filed objections to the Report, which were docketed on March 2, 2020<sup>1</sup> (Doc. 6). Petitioner contends that he should not be required to pay the \$5 filing fee because his prison account currently has less than that amount in it, and he will be denied due process if not allowed to proceed with this action. He does not dispute, however, the magistrate judge’s finding that his account in the past six months had \$450 deposited into it. While he disagrees with the magistrate judge’s determination that this reflects his ability to pay the \$5 filing fee without incurring undue financial hardship, he offers no evidence to the contrary. Accordingly, the court **overrules** Petitioner’s objection.

Having considered the Motion (Doc. 4), record in this case, and Report, and having conducted a de novo review of that portion of the Report to which objection was made, the court determines that the findings and conclusions of the magistrate judge are correct, and **accepts** them as those of the court. Accordingly, the court **denies** Petitioner's Motion and **directs** him to pay the \$5 filing fee no later than **April 15, 2021**, if he wishes to proceed with this action. *Failure to do so will result in dismissal without prejudice this action, pursuant to Rule 41(b), as a result of Petitioner's failure to prosecute and comply with a court order.*

**It is so ordered** this 25th day of March, 2021.

  
Sam A. Lindsay  
United States District Judge